As far as I can see, the only ground for complaint either accused may have on the caning sentences is that the number of strokes he is to receive for one offence did not merge into the number of strokes for the other. In my view, with the provision for minimum sentences of strokes of the cane for the two offences each respectively pleaded guilty to and my reading of the effect of s 17 upon the punishment of caning, I had no alternative but to direct that the number of strokes for one offence in each case shall be aggregated with the number of strokes for the other offence for which that accused was convicted. In my view, the aggregation will take place even without my direction.

I also ordered that the exhibits used in the above two criminal cases be retained by the police until another related case is heard and that the exhibits be disposed of by the judge who will hear that case.

Order accordingly.

Solicitors: *Gopal & Tan.*

Reported by *Mathavan Devadas*

Commercial Union Assurance Co plc v Lee Siew Khuan

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 35 OF 1989
CHAN SEK KEONG J
29 NOVEMBER 1990

Insurance — Personal property covered under an 'All Risks' policy — Loss — No finding as to when and where property was lost — Whether plaintiff had failed to prove his claim

Evidence — Expert witness — Valuation of diamond gold ring by an advocate and solicitor — Whether he qualifies as an expert witness

Words and Phrases — 'Expert'

The plaintiff made a claim against the defendants, an insurance company, under an 'All Risks' policy for various personal items that he claimed he had lost during a visit to Perth, Australia. The plaintiff could not account for how he lost the items. The insurance company refused to pay and put the plaintiff on strict proof. At the trial, the court was satisfied that the plaintiff was telling the truth and allowed the claim.

The insurance company now appeals against the decision on the following grounds: the plaintiff's account was inherently incredible, and that it was necessary for the court to find when the loss occurred but had failed to do so. The insurance company also argued that the plaintiff had failed to prove the value of one of the items, a ring, as the court had relied on the evidence of an advocate and solicitor in assessing the value of the ring. The defendant also appealed against the order of costs, on the basis that since it had succeeded on several issues, the court should have awarded costs be borne equally or in some other proportion.

Held, dismissing the appeal:

(1) The plaintiff's account of the loss was not inherently incredible or incomprehensible.

(2) It was not necessary for the court to make a finding as to when or where exactly the loss occurred in this case. The crucial issue was whether the plaintiff had lost the property. The district judge found in the plaintiff's favour and it would be wrong now to disagree with such finding of the district judge which was based on an assessment of the plaintiff's credibility as a witness.

(3) An expert need not be qualified professionally to be accepted as an expert. If the court is satisfied that the witness has sufficient knowledge or expertise to qualify as an expert, he can be regarded as such. The court was entitled to rely on the evidence of the advocate and solicitor as he was shown to know enough about diamonds to assess their value.

(4) The taxing registrar should take into account, when taxing the plaintiff's bill of costs, any claim for costs on issues in respect of which he has failed.

Cases referred to

1 *Blay* v *Pollard & Anor* [1930] 1 KB 628 (refd)
2 *Esso Petroleum Co Ltd* v *Southport Corp* [1956] AC 218 (refd)
3 *Regina Fur Co Ltd* v *Bossom* [1958] 2 Lloyd's Rep 425 (refd)
4 *PP* v *Muhamed bin Sulaiman* [1982] 2 MLJ 320 (folld)

Appeal from: DC Suit No 7423 of 1987 (District Court, Singapore)

Gan Hiang Chye for the appellants/defendants.
David Hew for the respondent/plaintiff.

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the defendants against the decision of the district judge ordering the defendants to pay to the plaintiff the sum of $24,000 for the loss of a diamond gold ring ('the diamond ring') and $400 for the loss of a Dupont diamond-studded ball-pen ('the Dupont pen'), and interest thereon.

The plaintiff's claim was made under an 'All Risks' insurance policy issued by the defendants and was for the value of lost property covered by the said policy. The plaintiff had claimed the sum of $44,000 ($14,400 for a Rolex watch with diamonds and $30,000 for the ring) and damages to be assessed for the Dupont pen, cash of A$1,000 and cash of $600. The cash claims were withdrawn at the commencement of the hearing. The claim for the loss of the Rolex watch failed for lack of evidence of value.

The plaintiff's case, as pleaded in the statement of claim, was as follows:

> 2 During the currency of the policy, namely, between 30 November 1986 to 3 December 1986 whilst on a visit to Perth, Australia, the plaintiff lost the insured property together with [the pen and the said cash].
>
> 3 On the plaintiff's return to Singapore, a police report was immediately lodged on 4 December 1986. The de-

fendants were also notified of the loss by the plaintiff verbally on the telephone on or about 4 December 1986. Subsequently, on 15 December 1986, the plaintiff completed and returned the defendant's property claim form.

The defendants filed a defence in which they pleaded various defences. That which is relevant to this appeal was that the plaintiff was put to strict proof of his claim.

The plaintiff gave evidence of how he came to lose the insured property. In essence, he could not account for how and when they were lost except that he could not find them when he opened his briefcase the second day after he came back from Perth on 2 December 1986. The night before he had opened his briefcase at home but found nothing amiss. He made a police report in which he stated the value of the ring as $34,000 and that of the Rolex watch as $14,000. He was cross-examined severely by counsel for the defendants during which he admitted a number of discrepancies in his account of when or how the properties were lost.

The district judge, in his grounds of decision, made a comprehensive examination of the plaintiff's evidence, discrepancies and all. He found as a fact the plaintiff had lost the insured property but made no finding on when and where the articles were lost. He concluded thus:

> All the abovementioned matters [the discrepancies], however, are not of crucial importance. What was of utmost importance was whether the plaintiff's evidence that the items were lost could be accepted as true. The defendants had not alleged fraud on the part of the plaintiff. I heard the plaintiff's evidence in court. I scrutinized his evidence. I was more than satisfied that he was telling the truth when he said he had lost the items.

Counsel for the appellants has urged me to find to the contrary on the ground that the plaintiff's account of the loss was inherently incredible or incomprehensible. I do not agree that the plaintiff's account was of this character. If a person, after coming home from office, finds missing an article, say a Parker pen, which he has put in his briefcase earlier in the morning, it is unlikely that he can tell when or how that thing became missing. He may be able to account for his own movements with his briefcase, but that would be all. Accounting becomes even more difficult after a five-day trip abroad. It would be wrong for me to disagree with the district judge's finding that the plaintiff did lose the insured articles as his finding was based on an assessment of the plaintiff's credibility as a witness.

Counsel also contended that since the district judge failed to make a finding on *when and where* the articles were lost, the plaintiff had failed to prove his claim on the pleadings. He further submitted that on the evidence, the articles could have been lost in Singapore as the plaintiff did not discover the loss until the second day after his return to Singapore. He cited the following authorities: *Bullen and Leake and Jacob's: Precedents of Pleadings* (12th Ed) at p 71; *Blay* v *Pollard*[1] and *Esso Petroleum Co Ltd* v *Southport Corp*[2] at p 241.

Counsel placed particular reliance on *Regina Fur Co Ltd* v *Bossom*.[3] In that case, RF had insured their furs with the defendant, an underwriter, under a Lloyd's 'All Risks' policy. The claim was pleaded as follows:

> On or about 23 August 1956 a quantity of furs and/or skins was stolen from the plaintiff's place of business at 190, Upper Thames Street London EC 4 and have not since been recovered. The total cost price was [X].

The defence consisted of putting the plaintiffs to strict proof of the allegation. RF's evidence was that the furs were stolen after the premises had been broken into and entered, between the hours of 8.50am and 9.20am on 23 August 1956. The trial judge dismissed the claim, finding, inter alia, that RF had failed to prove the alleged quantity of furs alleged to have been stolen, or that the burglary ever took place. RF appealed. In the course of his judgment, Lord Evershed MR said (at p 428):

> At this point I may dispose of one suggestion which was made on the appellants' side. It was said: This was an all risks policy; and let it be assumed that the judge did not find that the burglary (and I am using this word) took place (as was said) between 8.50 and 9.20am, but at some other time, still it is covered. Nay; they said it is even covered if it was established that the thief was Mr Freeman himself or one of the other servants of the company, Mr Waxman and a Miss Hoare. As regards *that suggestion*, it is sufficient if I say that that is not a matter that was ever pleaded, and it was quite inconsistent with any case made on the plaintiff's part. In my judgment it could not possibly be sustained. (My emphasis.)

Counsel relied on this passage as deciding that if the trial judge had in that case found that the burglary had occurred, say between 9.20am to 10.50am instead of 8.50am to 9.20am as pleaded, the claim of RF would also have failed. I think that Lord Evershed MR's dismissal of the suggestion was referable to the second suggestion and not the first. But, if indeed his Lordship meant the first, I decline to follow the ruling, which was merely obiter. I am also not prepared to apply it at this stage of the proceedings to defeat a judgment in favour of the plaintiff when it was not put before the district judge in those terms. If counsel for the defendants had done so, counsel for the plaintiff would have sought an amendment which would have been allowed. I agree with the district judge that the crucial issue in this case was whether the plaintiff had lost the insured property. The trip abroad merely formed the backdrop to the loss. I find no merit in the pleading point.

Counsel for the defendants also contended that the plaintiff had failed to prove the value of the diamond ring and the Dupont pen. In making his finding on the value of the ring, the district judge accepted the evi-

dence of Donald Yeo, an advocate and solicitor. His evidence was that he had seen the plaintiff wearing the ring at the plaintiff's wedding about ten years ago, and that he:

> ... shook hands and as I held his hand, I touched the ring and looked at it and admired it. The ring looked expensive to me then. It was a rather large diamond ring and I thought then I would like to own one like that if I had the money. I thought that the ring would be in the region of $20,000 to $30,000. I am not an expert. I may be wrong. I have many diamonds myself. I appreciate diamonds myself. In fact I have one which is 3 carat. It was given to me by my mother.

The cross-examination of Donald Yeo was as follows:

> Q: You have been a legal officer and then you became advocate and solicitor. Even now you are an advocate and solicitor?
> A: Yes.
> Q: You are not in the jewellery trade?
> A: Not really, but I do exchange diamonds or sell them to friends. In point of fact, in 1988, I sold one solitaire diamond of 1.25 carat, grade D, flawless, to a particular friend.

The district judge's finding was as follows:

> On the gold ring with diamonds, the plaintiff's testimony was the ring was given to him in 1974 or 1975. There was the evidence of Donald Yeo. Although he was not in the jewellery business, I did not think he was not competent to assess the price of the ring as he himself said he appreciated diamonds, kept many diamonds and exchanged or sold diamonds to friends. He had put the value of the ring in the region of $20,000 to $30,000. That, however, was the figure placed at the date of the plaintiff's wedding in 1974 or 1975. As at 1986 the value must have appreciated. I felt the figure of $30,000 for this loss was appropriate.
> ...
> Considering all the circumstances I found that the plaintiff was entitled to the sum of $25,000 minus a set off of $100 for the gold ring with diamonds ...

Counsel for the defendants submitted that this finding was wrong on the following grounds: (i) there was no evidence of value as Donald Yeo was not an expert, (ii) the award of $25,000 was inconsistent with his finding that the appropriate value was $30,000. It was urged on this court, in respect of (ii), that the discrepancy between the award and the assessment of the district judge showed that it may not have been 'judicially' or rationally decided.

With respect to the second ground, I do not think that the district judge acted unjudicially or irrationally but at the lowest absent-mindedly. Since assessment of the value of the diamond ring was higher than his award, a cross-appeal by the plaintiff would have succeeded if the assessment was correct in law.

As to the first ground, counsel for the plaintiff contended that the district judge was correct in accepting the evidence of Donald Yeo as to the value of the ring. He relied on the decision of *PP* v *Muhamed bin Sulaiman*,[4] where the Federal Court said (at p 322):

> As to the question whether or not Mr Lum is an expert, it is true that this is a preliminary question to be determined, but it is a question upon which, in practice, considerable laxity prevails. This is because while the expert must be 'skilled', he need not be so by special study, he may be so by *experience;* and the fact that he has not acquired his knowledge professionally goes merely to weight and not to admissibility.

Counsel pointed out that Donald Yeo had, from his answers under cross-examination, shown that he knew enough about diamonds to assess their value.

I agree with the submission of counsel for the plaintiff. Knowledge on any particular subject matter need not be acquired professionally. It is not the jeweller only who knows the value of a diamond ring. It is for the judge to decide whether a witness has sufficient knowledge or expertise to qualify as an expert. In the light of the answers given by Donald Yeo under cross-examination, I cannot fault the district judge for accepting him, Donald Yeo, as a person who was sufficiently *au fait* with diamonds to be able to give an assessment of the value of a diamond ring which he had seen, touched and admired. I do not think counsel can now complain about the admissibility of this evidence or its weight since he cut short his own cross-examination on the assumption that Donald Yeo was not an expert for the purpose of the law. He should have insisted that the district judge make a ruling as to the credentials of Donald Yeo as an expert.

Counsel for the defendants also complained against the award of $400 for the Dupont pen on the ground that there was no basis for taking off 11% of the purchase price when the district judge had not seen the Dupont pen and therefore did not know its state and condition thereof. It was contended that there was no expert evidence on whether 11% was the correct amount of depreciation. I do not accept this argument. The plaintiff's evidence was that he paid $450 for the Dupont pen in December 1985 (for which he was able to produce a receipt) and that he took the pen with him to Perth for 'use and ornamentation'. It could be inferred from this latter statement that the pen was still in good condition. As the pen was lost a year after purchase, I cannot say that the district judge's depreciation of 11% is wrong. If he were wrong, he might have been wrong to the advantage of the plaintiff! The fact was that the pen was both a tool and an ornament, and given that inflation was an annual phenomenon (which I think I am entitled to take judicial notice of, even in Singapore), it was unlikely that a new Dupont pen of a similar model would be any cheaper. I cannot say the depreciation given by the district judge was wrong. In my view, the plaintiff had adduced sufficient evidence as a starting point from which the district judge could assess the

value of the Dupont pen. The district judge did his best on the materials before him. I find no merit in this ground of appeal.

There was also an appeal on the order for costs. It was contended that the defendants had succeeded on several issues and that the district judge should either decide that costs be borne equally or in some other portion or that the defendants be entitled to costs on the issues they had succeeded in. However, this was not the point argued before the district judge. His notes of evidence showed that counsel for the defendants had argued that there should be fixed costs and not taxed costs. The district judge exercised his discretion to award the taxed costs. I am not prepared to accept a different argument on appeal, especially when costs is a matter of discretion and the district judge has exercised his discretion on a basis different from which it is now being argued. In any case, on taxation, I would expect the taxing registrar to take into account, when taxing the bill of costs of the plaintiff, any claim for costs on issues in respect of which he has failed.

For the above reasons, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Cooma Lau & Loh.*

Reported by *S Surenthiraraj*

MALAYSIAN REPORTS

Karpal Singh & Anor v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL REFERENCE NO 06-2-90
ABDUL HAMID OMAR LP, AJAIB SINGH AND JEMURI SERJAN SCJJ
24 JUNE 1991

Criminal Procedure — Frivolous proceedings — General inherent power of court to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings — Power of Attorney General as public prosecutor — Procedure in summary trials — Power of High Court in case of obvious abuses or other forms of material defects — Criminal Procedure Code (FMS Cap 6), ss 5 & 173 — Federal Constitution, art 145(3)

English Law — Application in criminal procedure — Criminal Procedure Code (FMS Cap 6), s 5

In this case the applicants had been charged in the magistrate's court on 22 April 1987 with separate offences under the Police Act 1967, the first applicant for having participated in an assembly in a public place without a licence from the officer-in-charge of the police district and the second applicant for convening the assembly without a licence. The offences were alleged to have been committed on 30 August 1984.

The initial complaint which gave rise to the charges was lodged on 30 August 1984. Warrants were issued by the magistrate, Kampar for the arrest of the applicants but the warrants were set aside by the High Court. The second applicant, it appeared, had applied for a licence to hold the assembly but the OCPD had referred the application to the chief police officer, Perak, who refused it. It was subsequently held by the Supreme Court on 13 March 1986 that the chief police officer had no authority to refuse the licence as the licensing authority was the OCPD (see *P Patto* v *Chief Police Officer, Perak & Ors*[4]). After that the prosecution preferred charges against each of the applicants. The case was mentioned before the magistrate on two occasions in April 1987 and fixed for hearing on 4 June 1987. The case was postponed a number of times at the request of the first applicant, who was engaged in the High Court. On 19 November 1987, the court was told that both the applicants were detained under the Internal Security Act 1960. It was only on 1 December 1988 that the cases were fixed for hearing on 18 July 1989. At the hearing, the applicants raised a preliminary objection contending that the proceedings against them amounted to oppression and prejudice and that the court had a general and inherent power to protect its process from abuse and to strike out the proceedings. The application was rejected by the magistrate and subsequently by the High Court on an application for revision. The applicants then referred the following question of law for the consideration of the Supreme Court:

'Whether the court has a general inherent power to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings.'

Held, deciding the question as follows:

(1) The question referred to the court is ambiguous and badly framed. However, to the specific question asked, the